

Appln. No.: 09/964,852  
Amendment dated November 19, 2007  
Responsive to Office Action of September 19, 2007

### REMARKS/ARGUMENTS

The Final Office Action of September 19, 2007, has been carefully reviewed and these remarks are responsive thereto. Claims 2, 19, 34, 35, and 40 have been canceled. Claims 1, 3-7, 9, 10, 12-14, 16-18, 20-33, and 36-39 have been amended. Claims 1 and 3-18, 20-33, and 36-39 remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

#### **Rejections Under 35 U.S.C. § 102**

Claims 1 and 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,708,961, hereinafter Hylton. Applicants respectfully traverse this rejection for at least the following reasons.

Amended independent claim 1 recites features that were similar to those previously recited in now-canceled claim 2. More specifically, amended claim 1 recites, among other features, "... re-multiplexing at least a part of the data stream of the first transmissions with data stored locally at the gateway. . . ." The Office Action at page 5 correctly notes that Hylton fails to teach storing data locally. Applicants submit that there would be no reason to modify Hylton to incorporate U.S. Pat. Publication No. 2002/0188567, hereinafter Candalore, in the manner asserted in the Office Action at pages 5-6 (with respect to claim 2 therein). Hylton at col. 8, lines 35-45 and Fig. 1 demonstrates a user activating a remote control 85 to select a program; a Digital Entertainment Terminal (DET) 102 receives a program selection from the remote control 85 and ultimately conveys the selection in the form of a message to a shared processing system 10, wherein a controller 19 within the shared processing system 10 recognizes the message as relating to a channel selection by a particular set-top terminal 100. Thus, the system described in Hylton merely selects program signals from those available on the network 5 for each of the terminals 100, digitally multiplexes those signals together in a single stream and broadcasts that stream. Col. 4, lines 60-64. The whole point of Hylton is to allocate *a program signal* to a set-top terminal 100. Thus, Applicants submit that there would be no reason to modify Hylton to re-multiplex at least a part of a data stream of the first transmissions with data stored locally at a gateway because the set-top terminal 100 could not identify an intended signal. Indeed, to re-multiplex in accordance with the above

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noted features as recited in claim 1 would destroy the intended purpose of Hylton. Applicants refer the Office to MPEP § 2143.01 (V. The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose) and (VI. The Proposed Modification Cannot Change The Principle Of Operation Of A Reference). Given that the whole point of Hylton is to allocate a program signal to a set-top terminal 100, there would be no advantage or benefit gained in Hylton in re-multiplexing at least a part of a data stream of the first transmissions with data stored locally at a gateway. To do so would unnecessarily add to the complexity of the operation in Hylton because Hylton would subsequently need to again de-multiplex the signal to identify a particular signal for reception by the set top terminal 100. Thus, notwithstanding whether Candelore teaches or suggests the recited features (as applied in the Office Action at pages 5-6 to now-canceled claim 2), the resultant combination is improper for at least the foregoing reasons. Accordingly, claim 1 is patentably distinguishable over Hylton (and Candelore).

Dependent claims 15-17, which each depend from claim 1, are allowable for at least the same reasons as claim 1.

#### Rejections Under 35 U.S.C. § 103

Claims 2-10, 13, and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton, in view of Candelore. This rejection is traversed.

Claim 2 has been canceled herein, rendering the corresponding rejection moot.

Claims 3-10, 13 and 14 each depend from claim 1, and are allowable for at least the same reasons as their respective base claim, given that the combination of Hylton and Candelore is improper for at least the reasons discussed above with respect to claim 1.

For example, claim 7 recites, "wherein the data stream is de-scrambled using a password." The Office Action at pages 6-7 acknowledges that Hylton and Candelore, either alone or in combination fail to teach or suggest the above noted features. The Office Action attempts to remedy these deficiencies by taking Official Notice, stating that the use of password protection to restrict accounts to authorized account holders was old in the art, and that it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify a proposed combination of Hylton and Candelore to use password protection for the (known) purpose of preventing unauthorized users

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from access to a subscriber's account. Applicants respectfully disagree with the Office's assertions, and submit that the Office has impermissibly applied hindsight to arrive at this conclusion. As noted in the Office Action at page 6, Candelore at paragraph [0059] demonstrates that access requirements and entitlements can provide consumers with a variety of choices for paying for the content and gaining access to scrambled content via pay per play (PPP), pay per view (PPV), impulse pay per view (IPPV), time based historical, pay per time (PPT), repurchase of copy never movies, personal scrambling, and regional pay per view. Even assuming (without admitting) that the use of password protection to restrict accounts to authorized account holders was old in the art, a skilled artisan would not have been motivated to combine that password protection with Candelore (and Hylton) to arrive at the recited features, because Candelore at paragraph [0059] discloses techniques to restrict content, and the addition of a password would unnecessarily increase the complexity of the Candelore method/system. As such, Official Notice fails to cure the deficiencies of Candelore and Hylton with respect to claim 7, and claim 7 is allowable for at least these additional reasons.

Claims 11, 12, 18, 19, 21, 27, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton, in view of U.S. Pat. No. 7,107,605, hereinafter Janik. This rejection is traversed.

Claim 19 has been canceled herein, rendering the corresponding rejection moot.

Amended independent claim 18 recites features similar to those described above with respect to claim 1. Janik fails to cure the above noted deficiencies of Hylton with respect to those features. Thus, notwithstanding whether the combination of Hylton and Janik is proper, the combination fails to result in the inventive features recited in claim 18. Claim 18 is allowable for at least these reasons.

Dependent claims 11, 12, 21, 27, and 28, which each depend from at least one of claims 1 and 18, are allowable for at least the same reasons as their respective base claims.

Claims 20, 22-26, and 29-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton and Janik, and further in view of Candelore. This rejection is traversed.

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Claims 34, 35, and 40 have been canceled herein, rendering the corresponding rejections moot.

Amended independent claim 29 recites features similar to those described above with respect to claim 1. As already discussed above, the combination of Hylton and Candelore is improper with respect to the noted features. With respect to the noted features, Janik fails to cure the deficiencies of Hylton, and Janik fails to cure the deficiencies of Candelore. Thus, notwithstanding whether a combination of Hylton and Janik or a combination of Janik and Candelore is proper, the combination fails to result in the inventive features recited in claim 29. Claim 29 is allowable for at least these reasons.

Dependent claims 20, 22-26, 30-33, 36-39, which each depend from at least one of claims 1, 18, and 29, are allowable for at least the same reasons as their respective base claims.

#### CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,  
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